



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tek-Lite, Inc.

File: B-225747.2

Date: September 4, 1987

DIGEST

1. Protester's interpretation of solicitation as providing for three bidding alternatives is unreasonable where item description sets forth only two alternatives and solicitation does not elsewhere expressly establish third alternative or otherwise augment item description.
2. Where solicitation allowed bids on only military specification or a specified value engineering change proposal (VECP), and provided for addition of evaluation factor to bid which indicates it is based on VECP, a bid not indicating it was based on VECP nevertheless should have evaluation factor added where it becomes clear that the bid in fact was based on VECP.

DECISION

Tek-Lite, Inc. protests award to any other bidder under invitation for bids (IFB) No. DLA400-87-B-2067, a small business set-aside issued by the Defense Logistics Agency (DLA) for 13,915 ground marker lights for use on aircraft runways and landing zones in emergencies. Tek-Lite maintains that it submitted the low, responsive bid and therefore is entitled to award. DLA has not taken final action on Tek-Lite's bid pending our decision.

We deny the protest.

The IFB's item description requested that the lights be provided in accordance with Military Specification L-52543C, as amended. The item description also identified, as an alternate, value engineering change proposal (VECP) No. 8307-I and referred to an attached "cut sheet" for the VECP. The cut sheet listed the specific changes to the military specification that had been approved under the VECP. The solicitation's evaluation clause explained that the government had accepted a VECP that provided an

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alternative to the item being purchased, and that since the government was required to make a royalty payment of \$5.71 for each VECF unit purchased, a corresponding amount would be added to VECF offers for evaluation purposes. The evaluation clause provided that offerors were to indicate (by marking one of two appropriate blocks) whether or not their offers were based on furnishing units incorporating the VECF, and that if a bidder failed to so indicate the bid would be considered to be based on the military specification, and the evaluation factor would not be added.

The protester submitted a bid that on its face offered units not incorporating the VECF, since neither of the two described boxes was checked, so it appeared the royalty evaluation factor would not apply, leaving Tek-Lite the apparent low bidder (Tek-Lite is not low with the factor added). The agency became aware after bid opening, however, and Tek-Lite has confirmed in its protest, that it intended to bid on a third basis, for which it believed the IFB provided. Tek-Lite states it read the cut sheet as containing a specification change different from the VECF 8307-I changes it knew had been approved, and thus as constituting an alternative separate from the VECF. Its bid having been prepared on this third basis, and not on the VECF, Tek-Lite states it assumed the royalty evaluation factor would not be added to its bid. DLA believes the IFB clearly and unambiguously provided for only two bidding options.

A solicitation is not ambiguous unless it is susceptible of two or more reasonable interpretations. Captain Hook Trading Co., B-224013, Nov. 17, 1986, 86-2 CPD ¶ 566. To be reasonable, an interpretation must be consistent with the solicitation read as a whole. Environmental Tectonics Corp., B-222568, Sept. 5, 1986, 86-2 CPD ¶ 267. Where, as here, there is a dispute between the protester and the agency as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions. Solartron Instruments, B-219609, Nov. 21, 1985, 85-2 CPD ¶ 583. Applying this standard here, we find that the solicitation is not ambiguous, and that the protester unreasonably interpreted the IFB.

The protester maintains that its interpretation of a third bidding option was valid because the IFB item description and cut sheet both referred to "ALTERNATE VECF 8307-I" but the evaluation clause merely referred to a VECF without designating it "alternate." Tek-Lite concluded from this that there was both a VECF 8307-I and an "alternate" VECF 8307-I, with the evaluation factor to apply only to the former. Tek-Lite considered an "alternate" VECF 8307-I feasible because VECF 8307-I, as previously approved,

allowed storage of color filters within the marker light canister as an option, while it believed "alternate" VECP 8307-I, as defined by the cut sheet, made such storage mandatory.

We think Tek-Lite unreasonably has read into the IFB distinctions that are not there. The IFB item description states that "ALTERNATE VECP 8307-I APPLIES, SEE CUT SHEET," and also references the military specification by number. The item description does not call for bids based on any other alternative. We believe it defies reason for Tek-Lite to suggest, in light of a clearly worded item description providing two bidding alternatives, that the mere reference in the evaluation clause (and elsewhere in the IFB) to a VECP without the "alternate" designation somehow set up a third alternative.

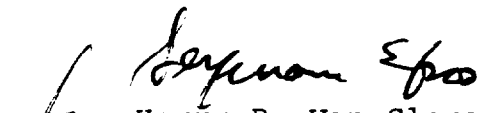
Moreover, while the evaluation clause does not use VECP in tandem with the word "alternate," the clause does state that "the government has accepted a [VECP], as identified in the procurement item description, which provides for a stated alternative with respect to . . . the item being purchased." Again, we think this language clearly indicated that the only VECP applicable to this procurement was the one designated "alternate" VECP in the item description, and that it was this "alternate" VECP to which the evaluation factor would apply.^{1/}

The remaining issue is the proper treatment of Tek-Lite's bid. Given our conclusion that the IFB provided for only two bidding alternatives and the fact that Tek-Lite did not check the box indicating a bid on the VECP, Tek-Lite's bid, on its face, is an acceptable offer based on the military specification, and the evaluation factor technically is not applicable. As has become clear in the course of the protest, however, Tek-Lite bid was based on furnishing items in accordance with the cut sheet, not the military specification, and the cut sheet does represent the VECP subject to the evaluation factor. Thus, if Tek-Lite were awarded a contract, the government would be required to pay royalty fees for use of the VECP. In these circumstances, Tek-

^{1/} In any case, it appears to us Tek-Lite's reading of the cut sheet is erroneous, since we do not read the cut sheet as making the storage of color filters within the marker light canister mandatory. Rather, the cut sheet (paragraph 3.6.8) stated that color filters could be furnished in conformance with either incorporated figure 4 or figure 6, and only required the filters to be stored within the canister if the filters were furnished in accordance with figure 6.

Lite's bid should be evaluated with the evaluation factor added in; the record indicates that this will displace Tek-Lite as the low bidder.

The protest is denied.


Harry R. Van Cleve
General Counsel